

1 NGC 09-02

2 STATE OF NEVADA
3 BEFORE THE NEVADA GAMING COMMISSION

4 STATE GAMING CONTROL BOARD,

5 Complainant,

6 vs.

COMPLAINT

7 FIESTA PALMS, LLC, dba PALMS CASINO
8 RESORT

9 Respondent.

10 The State of Nevada, on relation of its STATE GAMING CONTROL BOARD (BOARD),
11 Complainant herein, by and through its counsel, CATHERINE CORTEZ MASTO, Attorney
12 General, by EDWARD L. MAGAW, Deputy Attorney General, hereby files this Complaint for
13 disciplinary action against FIESTA PALMS, LLC, dba PALMS CASINO RESORT (PALMS),
14 Respondent herein, pursuant to Nevada Revised Statute (NRS) 463.310(2) and alleges as
15 follows:

16 JURISDICTION

17 1. Complainant, BOARD, is an administrative agency of the State of Nevada duly
18 organized and existing under and by virtue of Chapter 463 of the NRS and is charged with the
19 administration and enforcement of the gaming laws of this state as set forth in Title 41 of the
20 NRS (Nevada Gaming Control Act) and the Regulations of the Nevada Gaming Commission.

21 2. Respondent, PALMS, located at 4321 West Flamingo Road, Las Vegas, Nevada
22 89103, is the holder of a nonrestricted gaming license, and, as such, is charged with the
23 responsibility of complying with all of the provisions of the Nevada Gaming Control Act and the
24 Regulations of the Nevada Gaming Commission.

25 RELEVANT LAW

26 3. The Nevada Legislature has declared under NRS 463.0129(1) that:

27 (a) The gaming industry is vitally important to the economy of
28 the State and the general welfare of the inhabitants.

1 (b) The continued growth and success of gaming is
2 dependent upon public confidence and trust that licensed gaming
3 and the manufacture, sale and distribution of gaming devices and
4 associated equipment are conducted honestly and competitively,
5 that establishments which hold restricted and nonrestricted licenses
6 where gaming is conducted and where gambling devices are
7 operated do not unduly impact the quality of life enjoyed by residents
8 of the surrounding neighborhoods, that the rights of the creditors of
9 licensees are protected and that gaming is free from criminal and
10 corruptive elements.

11 (c) Public confidence and trust can only be maintained by
12 strict regulation of all persons, locations, practices, associations and
13 activities related to the operation of licensed gaming establishments,
14 the manufacture, sale or distribution of gaming devices and
15 associated equipment and the operation of inter-casino linked
16 systems.

17 (d) All establishments where gaming is conducted and where
18 gaming devices are operated, and manufacturers, sellers and
19 distributors of certain gaming devices and equipment, and operators
20 of inter-casino linked systems must therefore be licensed, controlled
21 and assisted to protect the public health, safety, morals, good order
22 and general welfare of the inhabitants of the State, to foster the
23 stability and success of gaming and to preserve the competitive
24 economy and policies of free competition of the State of Nevada.

25 NRS 463.0129(1)(a)-(d).

26 4. The Nevada Gaming Commission has full and absolute power and authority to
27 limit, condition, restrict, revoke or suspend any license, or fine any person licensed, for any
28 cause deemed reasonable. See NRS 463.1405(4).

1 5. The BOARD is authorized to observe the conduct of licensees in order to ensure
2 that the gaming operations are not being conducted in an unsuitable manner. See NRS
3 463.1405(1).

4 6. This continuing obligation is repeated in Nevada Gaming Commission Regulation
5 5.040, which provides as follows:

6 **A gaming license is a revocable privilege, and no holder**
7 **thereof shall be deemed to have acquired any vested rights**
8 **therein or thereunder.** The burden of proving his qualifications to
9 hold any license rests at all times on the licensee. **The board is**
10 **charged by law with the duty of observing the conduct of all**
11 **licensees to the end that licenses shall not be held by**
12 **unqualified or disqualified persons or unsuitable persons or**
13 **persons whose operations are conducted in an unsuitable**
14 **manner.**

15 Nev. Gaming Comm'n Reg. 5.040 (emphasis added).

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1 7. Nevada Gaming Commission Regulation 5.010(2) provides that the
2 “[r]esponsibility for the employment and maintenance of suitable methods of operation rests
3 with the licensee, and willful or persistent use or toleration of methods of operation deemed
4 unsuitable will constitute grounds for license revocation or other disciplinary action.” Nev.
5 Gaming Comm’n Reg. 5.010(2).

6 8. Nevada Gaming Commission Regulation 5.011 states in relevant part as follows:

7 The board and the commission deem any activity on the part
8 of any licensee, his agents or employees, that is inimical to the
9 public health, safety, morals, good order and general welfare of the
10 people of the State of Nevada, or that would reflect or tend to reflect
11 discredit upon the State of Nevada or the gaming industry, to be an
12 unsuitable method of operation and shall be grounds for disciplinary
13 action by the board and the commission in accordance with the
14 Nevada Gaming Control Act and the regulations of the board and
15 the commission. Without limiting the generality of the foregoing, the
16 following acts or omissions may be determined to be unsuitable
17 methods of operation:

18 1. Failure to exercise discretion and sound judgment to
19 prevent incidents which might reflect on the repute of the State of
20 Nevada and act as a detriment to the development of the industry.

21

22 **8. Failure to comply with or make provision for**
23 **compliance with all federal, state and local laws and regulations**
24 **pertaining to the operations of a licensed establishment**
25 including, without limiting the generality of the foregoing, payment of
26 license fees, withholding any payroll taxes, liquor and entertainment
27 taxes and antitrust and monopoly statutes.

28 **The Nevada gaming commission in the exercise of its**
sound discretion can make its own determination of whether or
not the licensee has failed to comply with the aforementioned,
but any such determination shall make use of the established
precedents in interpreting the language of the applicable
statutes. Nothing in this section shall be deemed to affect any right
to judicial review.

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10 10. Failure to conduct gaming operations in accordance with
11 proper standards of custom, decorum and decency, or permit any
12 type of conduct in the gaming establishment which reflects or tends
13 to reflect on the repute of the State of Nevada and act as a detriment
14 to the gaming industry

15 Nev. Gaming Comm’n Reg. 5.011(1), (8), and (10) (emphasis added).

1 9. Nevada Gaming Commission Regulation 5.030 provides as follows:

2 **Violation of any provision of the Nevada Gaming Control**
3 **Act or of these regulations by a licensee, his agent or employee**
4 **shall be deemed** contrary to the public health, safety, morals, good
5 order and general welfare of the inhabitants of the State of Nevada
6 **and grounds for suspension or revocation of a license.**
7 Acceptance of a state gaming license or renewal thereof by a
8 licensee constitutes an agreement on the part of the licensee to be
9 bound by all of the regulations of the commission as the same now
10 are or may hereafter be amended or promulgated. **It is the**
11 **responsibility of the licensee to keep himself informed of the**
12 **content of all such regulations, and ignorance thereof will not**
13 **excuse violations.**

14 Nev. Gaming Comm'n Reg. 5.030 (emphasis added).

15 10. Nevada Revised Statutes 463.310 states in relevant part as follows:

16 1. The Board shall make appropriate investigations:

17 (a) To determine whether there has been any violation of this
18 chapter or chapter 462, 464, 465 or 466 of NRS or any regulations
19 adopted thereunder.

20 (b) To determine any facts, conditions, practices or matters
21 which it may deem necessary or proper to aid in the enforcement of
22 any such law or regulation.

23

24 2. If, after any investigation the Board is satisfied that a
25 license, registration, finding of suitability, pari-mutuel license or prior
26 approval by the Commission of any transaction for which the
27 approval was required or permitted under the provisions of this
28 chapter or chapter 462, 464 or 466 of NRS should be limited,
conditioned, suspended or revoked, it shall initiate a hearing before
the Commission by filing a complaint with the Commission in
accordance with NRS 463.312 and transmit therewith a summary of
evidence in its possession bearing on the matter and the transcript
of testimony at any investigative hearing conducted by or on behalf
of the Board.

NRS 463.310(1)(a) and (b), and (2).

11. Nevada Revised Statute 463.1405(3) provides:

3. The Board has full and absolute power and authority to
recommend the denial of any application, the limitation, conditioning
or restriction of any license, registration, finding of suitability or
approval, the suspension or revocation of any license, registration,
finding of suitability or approval or the imposition of a fine upon any
person licensed, registered, found suitable or approved for any
cause deemed reasonable by the Board.

NRS 463.1405(3).

1 12. Nevada Revised Statute 463.169(1) provides:

2 1. **A person shall not receive any consideration, direct or**
3 **indirect, for conducting a tournament or contest on behalf of or**
4 **in conjunction with a gaming licensee:**

5 (a) **Which involves** a sporting event upon which wagers may
6 be accepted or racing held at a track which uses the pari-mutuel
7 system of wagering or **gaming;**

8 (b) **In which persons pay a fee for the privilege of**
9 **participating;** and

10 (c) **In which prizes are awarded to winners,**
11 **unless he has registered with the Board in the manner**
12 **prescribed by the Board and supplied such information as the**
13 **Commission requires or unless he is an officer or employee of**
14 **the licensee.**

15 NRS 463.169(1) (emphasis added).

16 13. The terms "Gaming" or "gambling," which are defined under NRS 463.0153, mean
17 to "deal, operate, carry on, conduct, maintain or expose for play any game as defined in NRS
18 463.0152, or to operate an inter-casino linked system." NRS 463.0153.

19 14. Pursuant to NRS 463.0152:

20 "Game" or "gambling game" means any game played with
21 cards, dice, equipment or any mechanical, electromechanical or
22 electronic device or machine for money, property, checks, credit or
23 any representative of value, including, without limiting the generality
24 of the foregoing, faro, monte, roulette, keno, bingo, fan-tan, twenty-
25 one, blackjack, seven-and-a-half, big injun, klondike, craps, **poker,**
26 **chuck-a-luck, Chinese chuck-a-luck (dai shu), wheel of fortune,**
27 **chemin de fer, baccarat, pai gow, beat the banker, panguingui, slot**
28 **machine, any banking or percentage game or any other game or**
device approved by the Commission, but does not include games
played with cards in private homes or residences in which no person
makes money for operating the game, except as a player, or games
operated by charitable or educational organizations which are
approved by the Board pursuant to the provisions of NRS 463.409.

NRS 463.0152 (emphasis added).

15. According to 463.0196 the term "tournament" means "a series of contests."

16. A "contest" is defined under NRS 463.01463 as a "competition among patrons for
a prize . . ." NRS 463.01463.

17. Nevada Gaming Commission Regulation 5.115(1) states:

1. Except as provided in this regulation, **a licensee shall**
remit the total prizes awarded to a patron as the result of
conducting any game, including a race book or sports pool,

1 **tournament, contest, or promotional activity (hereinafter collectively**
2 **referred to as "gaming or promotional activity") conducted in**
3 **Nevada upon validation of the prize payout.**

4 Nev. Gaming Comm'n Reg. 5.115(1).

5 **COUNT I**
6 **VIOLATION OF NEVADA GAMING COMMISSION REGULATION 5.011(1)**
7 **ALLOWING AN IMPROPER TOURNAMENT TO BE CONDUCTED ON ITS PREMISES**

8 18. The BOARD realleges and incorporates by reference paragraphs 1 through 17
9 above as though set forth in full herein.

10 19. On or about August 12, 2007, the PALMS hosted and/or conducted a poker
11 tournament on its premises in conjunction with, and organized by, Michael Eakman &
12 Associates (MEA) to benefit the Jewish Community Center of Southern Nevada (JCCSN).

13 20. Individuals who competed in the above referenced poker tournament were
14 required to pay an entry fee to MEA in order to participate. The winner of the poker
15 tournament was to receive a \$10,000 seat at the 2008 World Series of Poker. For its role in
16 conducting the poker tournament, MEA was to receive 75% of the profits from the tournament.
17 The remaining 25% of the profits were to go to the JCCSN as a donation. The PALMS was
18 not a party to the agreement between MEA and the JCCSN.

19 21. According to NRS 463.169(1), a person may not receive any consideration for
20 conducting a tournament on behalf of, or in conjunction with, a gaming licensee, unless that
21 person has registered to do so with the BOARD.

22 22. At all times relevant to this Complaint, MEA was not registered with the Board to
23 receive consideration for conducting a tournament as required under NRS 463.169, yet it
24 received consideration for its role in the above referenced poker tournament. None of the
25 consideration received by MEA was paid by the PALMS.

26 23. At no time prior to allowing the MEA tournament to take place on its premises did
27 the PALMS contact the BOARD, or make any other effort, to determine whether MEA had
28 registered with the BOARD pursuant to NRS 463.169.

29 24. By permitting the above poker tournament to be conducted on its premises, in
30 which MEA received consideration and when MEA was not registered with the BOARD under

1 NRS 463.169, as it was required to be, the PALMS failed to exercise the level of discretion
2 and sound judgment expected of a gaming licensee in violation of Nevada Gaming
3 Commission Regulation 5.011(1).

4 25. Such a violation on the part of the PALMS constitutes an unsuitable method of
5 operation and grounds for disciplinary action. See Nev. Gaming Comm'n Regs. 5.010(2) and
6 5.030.

7 **COUNT II**
8 **VIOLATION OF NEVADA GAMING COMMISSION REGULATION 5.011(1)**
9 **FAILURE TO EXERCISE PROPER DISCRETION AND SOUND JUDGMENT**

10 26. The BOARD realleges and incorporates by reference paragraphs 1 through 25
11 above as though set forth in full herein.

12 27. In regards to the August 12, 2007, poker tournament, MEA did not remit the
13 applicable donation to the JCCSN until sometime in late December 2007, or early January
14 2008, which was over four months after the tournament was held.

15 28. Based on the circumstances described in Counts I and II, it is clear that the
16 PALMS did not perform the necessary overall due diligence required to adequately plan for,
17 host, and follow-up such an event.

18 29. By allowing the August 12, 2007, poker tournament to proceed without adequate
19 planning and follow-up, the PALMS failed to exercise the proper discretion and sound
20 judgment necessary to prevent a situation that might reflect negatively on the reputation of the
21 State of Nevada and its gaming industry, thus violating Nevada Gaming Commission
22 Regulation 5.011(1).

23 30. Such a violation on the part of the PALMS constitutes an unsuitable method of
24 operation and grounds for disciplinary action. See Nev. Gaming Comm'n Regs. 5.010(2) and
25 5.030

26 **COUNT III**
27 **VIOLATION OF NEVADA GAMING COMMISSION REGULATION 5.011(1)**
28 **ALLOWING AN IMPROPER TOURNAMENT TO BE CONDUCTED ON ITS PREMISES**

31. The BOARD realleges and incorporates by reference paragraphs 1 through 30
above as though set forth in full herein.

1 32. From October 20, 2007, through October 23, 2007, the PALMS hosted and/or
2 conducted a poker tournament on its premises in conjunction with, and organized by, the
3 United States Poker League (USPL). The PALMS was not a party to the agreements
4 between the USPL and the tournament entrants. The agreement of the PALMS with the
5 USPL was to provide space, tables and dealers and to provide supervision over the poker
6 games to ensure compliance with the poker tournament rules. No contractual agreement
7 between the USPL and its tournament contestants or between the USPL and the PALMS
8 assigned any responsibility to the PALMS to pay the tournament prizes.

9 33. Individuals who competed in the above referenced poker tournament were
10 required to pay an entry fee to the USPL in order to participate. The winners of the poker
11 tournament were to receive cash prizes paid by the USPL. In consideration for its role in
12 conducting the poker tournament, the USPL was to retain a portion of the registration fees.

13 34. According to NRS 463.169(1), a person may not receive any consideration for
14 conducting a tournament on behalf of, or in conjunction with, a gaming licensee, unless that
15 person has registered to do so with the BOARD.

16 35. At all times relevant to this Complaint, the USPL was not registered with the Board
17 to receive consideration for conducting a tournament as required under NRS 463.169, yet it
18 received consideration for its role in the above referenced poker tournament. None of the
19 consideration received by the USPL was paid by the PALMS.

20 36. At no time prior to allowing the USPL tournament to take place on its premises did
21 the PALMS contact the BOARD, or make any other effort, to determine whether the USPL had
22 registered with the BOARD pursuant to NRS 463.169.

23 37. By permitting the above poker tournament to be conducted on its premises, in
24 which the USPL received consideration and when the USPL was not registered with the
25 BOARD under NRS 463.169, as it was required to be, the PALMS failed to exercise the level
26 of discretion and sound judgment expected of a gaming licensee in violation of Nevada
27 Gaming Commission Regulation 5.011(1).

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1 38. Such a violation on the part of the PALMS constitutes an unsuitable method of
2 operation and grounds for disciplinary action. See Nev. Gaming Comm'n Regs. 5.010(2) and
3 5.030.

4 **COUNT IV**
5 **VIOLATION OF NEVADA GAMING COMMISSION REGULATIONS 5.011(8), AND (10),**
6 **AND 5.115(1) - FAILURE TO TIMELY REMIT PRIZE FROM A TOURNAMENT**

7 39. The BOARD realleges and incorporates by reference paragraphs 1 through 38
8 above as though set forth in full herein.

9 40. On or about October 23, 2007, at the completion of the poker tournament
10 discussed in Count III above, the USPL did not have enough funds on hand to cover all cash
11 prizes relating to the tournament.

12 41. As a result, instead of receiving their full prize from the USPL immediately upon
13 verification of the winners of the tournament on October 23, 2007, at least twenty-seven (27)
14 of the winners were given one-half of their prizes in cash and the other half via checks post-
15 dated to November 1, 2007. Each such winner was given instructions by the USPL not to
16 cash the check until the post-date on the checks.

17 42. Sometime on or after November 1, 2007, when the winning participants attempted
18 to cash the post-dated checks referred to above, all but five of the post-dated checks were
19 returned due to non-sufficient funds (NSF).

20 43. In all, twenty-two winners had their post-dated checks returned NSF.

21 44. The NSF checks totaled Four Hundred Fifty Thousand Four Hundred Sixteen
22 Dollars (\$450,416).

23 45. Pursuant to Nevada Gaming Commission Regulation 5.115(1), a gaming licensee
24 is required to remit total prizes awarded to a patron as the result of a tournament "upon
25 validation of the prize payout." Nev. Gaming Comm'n Reg. 5.115(1).

26 46. In regards to the USPL poker tournament at issue, the prize payouts were
27 validated upon the completion of the tournament on or about October 23, 2007, and therefore,
28 pursuant to Nevada Gaming Commission Regulation 5.115(1), all prize money was required
to be remitted on that date. However, as described above, only half of the prize money (the

1 portion paid in cash) was remitted on that date. The other half of the prize money (the portion
2 paid via post-dated checks) was not remitted on that date.

3 47. Since the poker tournament at issue was held in conjunction with the PALMS, on
4 its premises, using its dealers, and under its supervision, the PALMS, as the gaming licensee,
5 had the ultimate responsibility to ensure that the poker tournament prizes were remitted in
6 compliance with Nevada Gaming Commission Regulation 5.115(1), regardless of whether or
7 not the USPL was the entity contractually obligated to do so under any agreement that may
8 have existed between the USPL and its tournament contestants and between the PALMS and
9 the USPL.

10 48. The PALMS itself subsequently paid all outstanding tournament prizes in full, in
11 the total amount of Four Hundred Fifty Thousand Four Hundred Sixteen Dollars (\$450,416).
12 The PALMS made such payments from its own funds without any contribution from the USPL.

13 49. By failing to ensure the prizes relating to the poker tournament at issue were
14 remitted in full at the time the prize payouts were validated, the PALMS violated Nevada
15 Gaming Commission Regulation 5.115(1). In addition, by not complying with the
16 aforementioned Regulation, the PALMS violated Nevada Gaming Commission Regulation
17 5.011(8).

18 50. Such violations on the part of the PALMS constitute an unsuitable method of
19 operation and grounds for disciplinary action. See Nev. Gaming Comm'n Regs. 5.010(2) and
20 5.030.

21 **COUNT V**
22 **VIOLATION OF NEVADA GAMING COMMISSION REGULATION – 5.011(1)**
23 **FAILURE TO EXERCISE PROPER DISCRETION AND SOUND JUDGMENT**

24 51. The BOARD realleges and incorporates by reference paragraphs 1 through 50
25 above as though set forth in full herein.

26 52. Based on the circumstances described in Counts III through IV above, it is clear
27 that the PALMS did not perform the necessary due diligence required to adequately plan for
28 and host such an event.

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1 4. For such other and further relief as the Nevada Gaming Commission may deem
2 just and proper.

3 DATED this 5th day of November, 2009.

4 STATE GAMING CONTROL BOARD

5 
6 DENNIS K. NEILANDER, Chairman


7 
8 RANDALL E. SAYRE, Member

9 
10 MARK A. LIPPARELLI, Member

11 Submitted by:

12 CATHERINE CORTEZ MASTO
13 Attorney General

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